

1634

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Mahenthiralingam

Application No.: 09/763,298

Filed: 1/20/2001

Title: Method for the Identification and
Speciation of Bacteria of the Burkholderia
Cepacia Complex

Attorney Docket No.: UBC.P-017

Group Art Unit: 1634

Examiner: M. Sheinberg

Assistant Commissioner for Patents

Washington, D.C. 20231

RESPONSE TO NOTICE OF NON-RESPONSIVE AMENDMENT

Dear Sir:

In response to the Restriction Requirement mailed November 4, 2002 for the above-captioned application, Applicants elected the subject matter of Group I, Claims 1-7 with traverse. The Examiner has now sent a Notice of Non-Responsive Amendment, stating that Applicant did not clearly elect specific primer pairs for examination.

Applicants note as a first matter that the Examiner has not provided any legal basis for an election that amounts to an election of species between the two primer pairs recited in the dependent claims. There is no provision for such an election under Unity of Invention practice which must be applied in the national phase of a PCT application. As noted in the previous action, the Examiner cited 37 CFR § 1.143 as authority for this requirement. Section 1896 of the MPEP states with respect to Unity of Invention Practice that

U.S. national applications filed under 35 U.S.C. 111(a) are subject to restriction practice in accordance with 37 CFR 1.141-1.146. See

I hereby certify that this paper and any attachments named herein are being deposited with the US Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents PO Box 1450, Alexandria, VA 22313-1450 on May 19, 2003.

Marina T. Larson
Marina T. Larson, PTO Reg. No. 32,038

May 19, 2003
Date of Signature

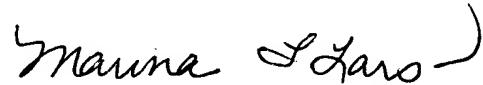
MPEP § 803. U.S. national stage applications filed under 35 U.S.C. 371 are subject to unity of invention practice in accordance with 37 CFR 1.475 and 1.499 (effective May 1, 1993).

37 CFR § 1.143 is not indicated as applicable to National Stage applications and § 1.499 says nothing about species elections. Ths, this requirement is traversed. Nevertheless, Applicants note the following. Thus, the election of species requirement is plainly improper.

Furthermore, Applicants previously noted, "the Examiner may start the Examination process with the sequences 3 and 4 as the non-specific amplification primers." This plainly gives the Examiner instructions as to an election, should the Examiner choose to maintain the unwarranted restriction in this case. The Notice of Non-Responsive Amendment was therefore improper.

Applicants again reiterate that for the reasons previously set forth, the claims of Groups I, II and III should all be examined in this application.

Respectfully Submitted,



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